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T H E
S P E E C H
O F

Dr. JOHN FREE,

CONTAINING

A concise and clear Account of the *English* Constitution, both *Old* and *New*: And of the Rise, and Progress of the *modern* Part of that Assembly, which we now call the *Parliament*.

Delivered July 30, 1753.

To the Worshipful the *Mayor*, Aldermen, and Citizens, at the *Town-Hall* in OXFORD, upon taking up his *Freedom* of the CITY.

הַנֶּחֱקַ פְּרָא עַל־דִּשָּׁא JOBUS Patiens.

—*Suspecto Senatus Populique imperio, ob certamina Potentium, —invalido legum Auxilio, quæ vi, ambitu, postremo pecunia turbabantur—cum alii sacerdotia et Consulatus ut spolia adepti, procurationes alii, et interiorem Potentiam, agerent verterent cuncta odio & terrore. Corrupti [cum essent] in Dominos servi —et quibus deerat inimicus per amicos oppressi.*

C. CORNELIUS Tacitus.

The Wound received at the *Norman-french* Invasion was like that of an *envenomed* Dart, it conveyed a Poison, which may long be lurking in the Veins of our Mother-Country. Our Constitution hath never recovered itself so far, as to retain for any *Time*, the healthy State of an *equal* Mixture.

SERMON before the Antigallicans.

THE SECOND EDITION.

L O N D O N:

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THE
S. P. H. O. N.

DEAR MRS. HARRIS,

I have just received your letter of the 10th inst. and am glad to hear from you. I am well and hope these few lines will find you the same.

I am very sorry to hear that you are not well. I hope you will soon be able to get on your feet again. I am sure you will.

I am sure you will be able to get on your feet again. I am sure you will.

I am sure you will be able to get on your feet again. I am sure you will.

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 DR. F R E E'S

 SPEECH at the *Town-Hall* in *Oxford*.

Mr. MAYOR and GENTLEMEN,

I THANK you for the Honour of being admitted, according to your ancient Usages, to the Freedom of my *native* City. I think there is something highly honourable even in the Name of *Freedom*: It is a Word, that hath been long in Use in this Island; it is neither of *Greek*, *Latin* nor *French* Original but entirely *English*. For our Ancestors brought it with them from lower *Saxony*. And as long as the *old* English Government or Constitution subsisted, they not only retained the Name, but held also, and enjoyed the *Thing*: which they looked upon as a Jewel so valuable to themselves and their Posterity, as never to be weighed in the Balance with any temporary Wealth, or Profit whatsoever. Because they knew that Things of this Kind were of no Value unless they could be used, and that those, who had lost their *Freedom* must lose also, by their *Captivity*, their Power to use them. They therefore in the first Place retained their Liberty as a Blessing in itself, and the sole Means of procuring, or relishing every other Enjoyment.

THESE Sentiments generally prevailed among
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the *English* till the Death of *Harold* the Second, when not attending to the Value of it, they began to lose Sight of their Liberty : And through their base Dealing at that Juncture, we their unhappy Descendents have seen it, but by Glimpses ever since.

I SHALL make this very plain by considering the various Excesses and Fluctuations in the Constitution, from the Time, wherein the BASTARD of *Normandy* aided by an Army from *Flanders* and the *Empire*, gained that Battle wherein King *Harold* lost at once his Life and Crown ; and in Consequence of which, the People were deprived of their ancient Form of Government. For taking Advantage of the Disunion of a Nation without an Head, he brought the Majority of those, who had *Power* and *Place*, in the old *ENGLISH* Government to attend him, in much the same Manner as they had done our ancient Kings, but finding them in this *Form* untractable, he determined to alter the *Constitution*. The *French* word *Parliament*, till the *NORMANS* came, was quite unknown in *England* : Nor did we ever read of an *House of Commons*. Our Kings were assisted occasionally, by and with the Advice of a general Council, which from the *Number* of its Assessors was called *Myckel Mote*, or *great Meeting* : and from their Qualifications, *Wittena-gemote* or Meeting of *Wise-Men*. The whole Assembly were called also by the general Name of *Wites*, or *Rice-men*, that is, People of the *Government*, though they were divided into several Classes, as first the *Elder Thanes* comprehending the *Ealdermen* or *Dukes*, then the *Earles* : After these the *lesser Thanes*, who were distinguished
only

only by that Title. Before the *Earles* we find the Churchmen *Arch-bishops*, and *Leod-bishops*, that is the Lords of *Dioceses* and others of the greater Clergy. Of this Assembly those who were most obnoxious as well as dangerous to the *Norman* Tyrant were those of the Rank of *Earles*, and *Thanes*; the latter Order he by Degrees abolished entirely, erecting upon the Ruins of their Honour, the Power and Title of the *Norman Barons*, with a Design by this new Order to eat out likewise, and annihilate as much as might be the *English Earles*. For in ancient Times, the *Earles*, as well as those few of the Nobility, who were *Dukes* inhabiting upon the Spot from whence they took their Titles were *naturally*, and by Office much more than *Lord-lieutenants* in their several Counties: And therefore while others were for fixing the *Usurper*, these were often to his Prejudice raising and heading Armies. So then to depress the Assertors of *English* Liberty, not only the *Thanes*, but also the greater Nobility were murdered or misplaced, or what remained of them, so lowered, and overmatched by the Exaltation of the *Norman* Order of *Barony*, that the old *English* Peerage and Power were by Degrees eclipsed, and the Government of the Nation being of a *military* Form was jointly in the Hands of the *Usurper*, and his *Baron-captains*.

THIS was one of the Periods, when our Ancestors saw not a Glimpse of LIBERTY.

THEY were in Hopes of a View of it not long after, but the seeming Light was but a false Appearance, and like the *Ignis fatuus* a mere Delusion. The *Norman* Kings though seemingly Supreme, being in Effect but *joint-tenants* of Sove-

reignty with the Barons, the Body began to quarrel with the Head, and to do it with the better Face, they talked of *Liberty*: But, alas, the Liberty they talked of, however by Accident it turned out afterwards, was never intended for the Subject. The Alteration was only with a View to erect their own Order into petty Tyrants, and plume themselves with the Feathers they should pluck from Royalty. For as at the Beginning of the *Norman Power*, their Form of Government by *King* and *Barons* resembled that of *Oliver Cromwel* and his Council of Officers: So within a little Period it changed so far, as to be scarce resembled by any Power now in *Europe*, unless it be that of *Poland*. For by the Reign of King JOHN it came to such a Pass, that those they called the *Barons* were in their several Territories independent and intolerable Tyrants, the *King* a Cypher, and the *People* Slaves.

THIS was the State of Things in the Reign of King JOHN, who beside the Insolence and *Faction* of the Nobles had the Power and *Interdicts* of the *Pope* to struggle with. It may be a Matter worth noting by the Way, what fatal Influence the *Power* of the Popes, or the *Notions* and Apprehensions of that Power as entertained by Princes and People have had upon the *English Liberties*. In the Time of King JOHN, it was the Instrument of depressing all the Attempts of the King for his own, and the People's Liberty, and the Means of assisting and establishing the Nobles in their intended Tyranny; which grew to such an insufferable Pitch in the Reign of *Henry the Third*, that the unhappy King, though with the Colours of Royalty about him, was carried a-

bout

like a Parrot in a Cage by the Earl of *Leicester*, and obliged like one of those Animals to utter only just such Words as his Keeper should dictate. After many and various Struggles, succeeding Princes assisted by Time and Policy, found Means to dissolve their Tyranny, however from the same Root of Bitterness, the *Norman* Itch of *Aristocracy*, there arose another Branch, which not being properly watched grew much too high, and extending itself with baneful Influence, overshadowed, withered, and extinguished MONARCHY. The *Seeds* of this *Revolution* were sown so long before, as in the Reign of *Henry the Third*, when there were many fatal Changes in the *Constitution*. The *Kingly* Power ceased while the *King* was yet alive, and the Government fell into the Hands of *two* or *three* People. The Faction of the *Barons*, who had the *King* in their Custody, not thinking their Bottom broad enough while the People held a natural Veneration for him, and Concern for his Liberty, were induced to let them also taste the Fruits of such a gainful *Monopoly*, as that, which engrossed at once the *Prerogative* of the *King*, and the Liberties of their Fellow-Subjects; an Order therefore was dispatched to the *Conservators* (a new *Magistracy*) to send four *Knights* from each County to sit as *Representatives* of their respective *Shires* in *Parliament*. For now that *French* Word began to be much in Fashion, instead of *Myckel-mote* and *Wittena-gemote*, by which our *English* Ancestors called the great Council of the Land. And indeed we had no Title to use the ancient Name, since the Assembly was now of another Form. For from these

these Beginnings arose that *new Appearance* in the Senate of *England*, which was afterwards formed into a Chamber by itself under the Name of the *House of Commons*. In the Year 1264 there were *four* Representatives for the *Shires*. But the Combination, who governed at that Time of Day, finding good Reason for *Exchanging* their Parliaments, lest by being long together they should think of naughty Things, or serve bad Purposes : There was another Parliament in the Year 1265. with a new Mixture of *elective* Commoners, there being two *Knights* Representatives of each *County*, and of each *City* and *Borough* as many *Citizens* and *Burgesses*.

IN all these later Periods the *FREEDOM* of *England* seemed to appear, and disappear according to the *Character*, and *Abilities* of the Prince. For it is very certain, that a Prince, who cannot maintain his own Liberty, will never be able to defend the Liberties of his People. For this Reason, the People should always strengthen the Hands of a *good KING* ; because in so doing they strengthen themselves, against any of those dangerous *Foremen*, who may prove at once their own and their Master's Enemies. But to return to my Remark, " that in the Reigns abovementioned, and in others succeeding, the Freedom of *England* seemed to appear and disappear according to the *Character*, and *Abilities* of the Prince."

DID *Edward* the First, a Prince of glorious Courage, and Capacity, suffer any to oppress himself, or oppress his People ? With all the Additions, the *Barons* made to their Assembly from the *COMMONS*, they were not able to abridge him of the proper *Power*, and *Activity* of a King.

BUT

BUT they broke out again upon his Successor, and all the succeeding *KINGS* to *Henry* the Seventh, as they wanted military Power or political Capacity were *Slaves* themselves, or saw their People *Slaves* to the Insolence of their *Nobles*, who at the same Time that they were *Makers of Kings* were sure to be *Destroyers of Subjects*. This exorbitant Power of theirs was so sensibly felt by *Henry* the Seventh, that he set himself to invent a Remedy, which though a temporary Remedy for him, proved to Posterity as bad as the Disease : For it was the Foundation of the after *unconstitutional* Elevation of the House of *Commons*.

CONSIDERING since that Time the Similitude of the Power of this House to that of the *Norman Barons*, and its occasional Rise from *them*, I called it a *Branch*. You may give it any other Name if you will, it was certainly something, which grew apace. By the Reign of *Henry* the Sixth, they had their Speaker at their Head and were gathered into a Body by themselves.

Henry the Seventh finding them in this forward Condition, and being desirous to pull down the *Nobles* by their Means, threw as much of the Power of the State into the Hands of the *Commons* as possible : So that if *Henry* the Eighth his Son, had not been a bloody Tyrant himself and kept them in Order by the Fear of Execution, they would have been too powerful for him. The short Reign of *Edward* the Sixth and his Minority gave them Advantages again : But the Reign of *Mary* being *popish* and aspiring to that opposite Kind of Tyranny, *unlimited MONARCHY*, was by no means auspicious to *Popularity*.

I HAVE before observed the Effects, which the
Power

Power, or the *Fear* of Popery have had not only on our *religious*, but *civil* Liberties. No sooner was *Mary* dead, but *Elizabeth*, for fear of harbouring some *Priest* in Disguise, took Care that there should be very *little* Learning in *her* House of *Commons*. Ignorance in Power soon grows turbulent: It was not long before they gave her saucy Answers. Which to a Woman of her high *Spirit* were extremely disagreeable; but her *Penetration* and *Hypocrisy* came in to the Assistance of her *Pride*, and so she saved Appearances. By reading *Demosthenes* and *Tully*, and other Writers, who treat of the ticklish Government of a popular State, she perceived the Danger of opposing herself to an *Aristocracy*, the Extent of whose Influence she could not see. For though she never shewed her *Distress* as a *Princess*, nor indeed was it ever so great, as that of King *John*, yet there was something very *similar* in their Cases. As *John* had to engage with the *Pope*, on one Hand, and the *Barons* on the other; she also was continually alarmed by the *Pope*; and apprehensive of the growing Power of the *new Barons* of the House of *Commons*, of whom she bought her Peace by imperceptibly yielding her *Prerogative*; and by her soothing and cajoling Speeches, which she conceived in such sort of Terms, that her People might believe, that to be the Effect of *Condescension* and *Goodness*, which only proceeded from Necessity, and Fear. However by Arts like these, she made Things last her Time, and never let the Vulgar discern, that the Balance of Power, which she held in *England* was become unequal. But when *James* the First came to the Crown, the Weight of the House of *Commons* was not to be concealed,

concealed, he not only *found* them, but *called* them *KINGS*: they permitted him indeed to enjoy that *Title*, but they aim'd at the *Power*; and he went on preaching about his *Prerogative*, while they looked grave without, and laughed within. For Matters were hastening apace to that Event, when even the *Name* of *Royalty* should be no more, to shew the Meaning of the Times, plain *Charles Stuart* was the Word, and the Scene opening discovered the Murder of the *King*, and a Set of *new Governors* busy in effacing all the *Acts* and *Monuments* of *Royal Power*. It is ridiculous to charge this *great Revolution* upon *Religion* alone, the Seeds of which, I have already observed were sown so long before as the Reign of *Henry III.* To bring it about there was one *constant*, and many *accidental* Causes, but *Religion* throughout the whole, however strong, was only a *changeable, secondary Instrument*.

THESE have been the *Fluctuations* of this Kingdom from the Time, that the *old English* System was altered by the *Norman Tyranny*, till the *Kingly Government*, which had subsisted so many hundred Years in *England*, was for a While entirely destroyed by the *unnatural Power* of the House of *Commons*, and the People thereby thoroughly enslaved. But the Miseries and Distractions of this *Usurpation* were too great to continue long. *Monarchy* was so essential to our *Constitution*, that the *Directors* of the *new System* were soon convinced, that neither the *Forms of Law*, nor any *material Instrument* of *Government* could subsist without it: And therefore they wanted at least the Figure of a King, and *Charles II.* was very little more. For coming in by *Courtesy* and

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not

not by *Conquest*, he was forced to proceed very tenderly. The *Monarchy* might have recovered itself *gradually* perhaps, by continuing without Convulsion through another REIGN, but *James II.* by his Attachment to Popery overset it all. King *William III.* came in upon his Declaration for a free Parliament, but whatever Security he might give his People against any Attempts from himself, he could procure them none against the Attempts of their own *Representatives*. They began to imprison his Subjects in *Kent*, and yet refused to bring them to a *Trial*. * The Spirit of the Nation could no longer bear such Insolence as this; 200,000 *Englishmen* threatned the *House of Commons*, which had so good an Effect, that they pretended to ask the *King's* Protection. What is reported of the King, that he proposed to the *House* to collect their Privileges in *Writing*, that he might pass them into a Law, is most likely to have happened 'at that Juncture. If such a Thing were in Agitation, so noble and generous a Proposal from a *crowned Head*, for the *Benefit* of the *Subjects*, was yet evaded by their *Representatives*. For which it would be hard to assign any other Cause, than that they had a *secret* Interest of their own to serve, distinct both from that, of *King*, and *People*. † The Neglect of such a *Crisis* was attended with the Consequences it deserved, and the Case of the *Petitioners* from *KENT* was in the Reign of Queen *Anne* more than paralleled by that of the Men of *Aylesbury*. Both very hard Cases, *Gentlemen*, and yet such may be the Case of *every Man* in *England*, if we want Sense, and Honesty, and Courage enough, to move for some Law, to prevent it. For God's Sake

* See Appendix No. 1.

† Appendix No. 2.

Sake then lay aside for a Time all *lesser* Distinctions, and turn your Eyes to a most *material* Article; an Article of *national* and *general* Concern, which affects all *Parties* and *Conditions*; every *King*, that shall sit upon the THRONE, and every *Man*, that shall ever be a *Subject*.

FOR if an House of Commons can at Pleasure exercise such a Power as was exercised in the Cases abovementioned, we absolutely depend upon their Pleasure, and cannot promise ourselves Security a Moment in our own Houses, while at the same Time the *King* and the *Laws* (as yet in Being) by affording us no Protection will become useless. It is of the last Importance therefore for you to enquire, whether such a *strange* Sort of Power hath of late been exercised. You have certainly Liberty to do this, if you have any Liberty at all. The Licence granted by the *Kings of England* to your Representatives for *Freedom of Speech and Counsel*, is granted for your Sakes; and therefore may truly be said to be a *Licence* at your Service. Use it then in the Name of God, especially at this constitutional Crisis, when you will have an Opportunity not only of telling the Grievances, you may have suffered from your own *Representatives*, and upbraiding any of them with their past Ignorance, and Misconduct, but also of proposing to them some Terms for your Security before you make another Choice. It would be surprizing indeed, if after you have bound down the *Power* of *KINGS* by *Magna Charta*, and the *Bill of Rights*, that the House of Commons, who are Creatures of your own making, may notwithstanding under

the Notion of Privilege, exercise over you a more unlimited Power than that of Kings.

It is such a *Power* as our **KINGS** can never grant: Because, they *have it not* to give. And how far the **PEOPLE** have ever granted, or consented to it, would appear to all the World; if they were to propose to every Candidate at the ensuing Election such a **PROVISION** for their *Liberties* as this.

S I R,

“ **Y**OU shall promise under your Hand and Seal (and in the Performance of that Promise, your *own* **HONOUR**, and that of your *Po-sterity* shall be concerned) that when you take your Seat in *Parliament*, you will never attempt to erect in the *House of Commons*, a Power superior to, or independent of, that of the *Laws* and the **KING**: But that you will with all convenient Speed endeavour to procure a Bill, which shall faithfully explain, and define, what is meant by the *Privileges* of the *HOUSE of Commons*; that every *Electer* in the Kingdom may know as well as *you*, the Extent of that Power, which he trusts in the Hands of a Fellow-Subject.

“ You shall deny none of the *King's* Subjects, who are untried and uncondemned, the Use, Benefit and Protection of the *Laws of England*: Nor ever attempt to stop, or over-rule the *due* Course of Law by **JURIES**, in any of the *King's* Courts of Justice.

“ You shall deny none of the *King's* Subjects the Rights and Privileges confirmed to them by *Magna Charta*, or any other *Charter*, Act,
“ or

“ or *Bill* containing and explaining *Rights* : Nor
 “ deem any to be Privileges of the House,
 “ which you do not know to be such, by some
 “ *Grant* or *Charter* of the CROWN ; or by some
 “ *antient*, and *undoubted* CUSTOM, established,
 “ and continued with the *free* Consent and Liking
 “ of the People.

“ And because it is of the utmost Importance,
 “ not only to your *Constituents*, but also to the
 “ whole *Body* of the NATION, that no *Mistake* be
 “ made, either in the *Explication* of such old
 “ *Grants* or *Charters*, or concerning the Antiqui-
 “ ty and *Reality* of *Precedents* and *Customs* : You
 “ shall farther consent, when the *Bill* is prepared,
 “ and before it *pass* the *House* ; to communicate
 “ *printed* Copies thereof, to your *Constituents*, that
 “ they may peruse them, for the Space of *two*
 “ Months ; and gather thereupon the Advice of
 “ such of their Body, as are well seen, and read
 “ in the *Antiquities*, and *Laws* of ENGLAND. To
 “ the Intent, that if any Objection can be fairly
 “ raised ; the *Bill*, in the Part objected to, may
 “ upon *Memorial* or *Petition* modestly presented,
 “ be subject to your after-thought, and further
 “ Amendment, or Alteration.”

SUCH a *Provision* for their *Liberties*, where they
 are trusted in any *Hands* besides their *own*, is what
 every *wise* NATION will demand : And what no
honest Man can with any good Grace deny, espe-
 cially as Things are established here in *England*.
 For as our Constitution does exact from our SO-
 VEREIGN himself, in this Particular, the *high* and
sacred Obligation of an *Oath* : It puts it in our
 Power no doubt to demand *some Compact* from
 any

any inferior Person, in whom we are to lodge a Power, which may be occasionally turned against our *Lives* and *Liberties*. Otherwise there would be People more *exempt* from the Observance of the *Laws*, and consequently more arbitrary, that is, superior to the KING himself: but a Set of Men *superior* to the KING are no Part of the *English* Constitution; and therefore the *English* Constitution is *against* such People. But those whom the *English* Constitution is *against*, are *against* the *English* Constitution.

FURTHER as a *discretionary* Power, and Dominion in the House of Commons, over the *Lives*, and *Liberties* of their Fellow-Subjects, or over the *Laws*, which are to protect those *Lives* and *Liberties*, is thus directly opposite to the *essential* and fundamental Parts of our Constitution: So is it contrary to the very *Being* of their own Assembly—to the *Character*, they assume to themselves,—and the *Idea*, the WORLD entertains of them.

FOR should a *Foreigner*, desirous to know the *Uses* of our CONSTITUTION, ask an *Englishman*—What *Occasion* have you for an *House of Commons*? His Answer no Doubt would be, *to defend the Liberties of the People*.—Upon which should the *Foreigner* ask farther,—but what if instead of *defending*, you put it in their Power to *destroy* them?—the *Englishman* perhaps might bluntly reply—That *then*, and *in that Case*—there would be *no Occasion* for an *House of Commons*.

So that considering the *use*, and proper *constitutional* Meaning of this House, and the *Right* you have as *free Electors* to know the *Sentiments* of your future *Representatives* (which cannot well be done

done but by acquainting them with your *own*) You have in the Reason of the Thing a Right also to propose to them, the *aforementioned*, or any *similar* PROVISIONS. They are at Liberty, to be sure, to receive, or reject them: But it is not likely, that any *honest, well-meaning* Gentlemen would be unwilling to limit, by a *written* Law, a *Power*, which a *free* Constitution can *never* give them, and which (if they *thought* they possessed) while there is a KING and LAWS in *England*, they may be ashamed to own.

AND now, *Gentlemen*, I have only to add a Word or two, to vindicate this my *unpolished* Address from *Misrepresentation*. I am, well aware, when People serve their COUNTRY upon *Principle*, without Regard to the interested Views, either of their *own*, or *another* PARTY; that, as they study to please *neither*, they may possibly be misrepresented by *both*. A *Courtier* may say perhaps (for there is often a Difference to be made between the *Party* of a *Court* and the *Party* of a *King*) I say a *Courtier* might insinuate that this Man is changing his *Principles*, and turning *Jacobite*. Gentlemen, you all know with what steady Affection my Father adhered to the Interest of the present Royal Family; and as I was born, and educated in this Place, you have been Eye-witnesses likewise of my own Conduct. If Opposition to *unconstitutional* and arbitrary Power (wherever I find it) make the Character of a *Whig*: I may fairly be said to come under that Denomination; most especially when I declare, as I have done in my *Writings*, and do now, very conformably to the Oath I have just taken,—“ that
“ if there be any such Thing as *hereditary* Right,
“ the

“ the Title would certainly belong to his Majesty King GEORGE—and that to any one who studies *English* History, he will appear to be of the most antient Race both of the *English* and *Scottish* Kings.” This is not the Declaration of a *Jacobite*.

AND lest any Gentlemen, who call themselves *Tories*, should think me a *ministerial* Tool, and that I am come to execute some *Scheme* of theirs; I frankly declare, and, I think, the Thing speaks for itself, that I never had Friends or Intimates about the *Court*. I have, upon trying Occasions, served a *Prince*, and a *good* Prince too, who is not permitted to take Notice of me; and *defended* a *Religion* which, as it is by Law established, ought to have afforded me better Bread. But I did not then foresee, that it was growing out of Date; because, in that Case I might reasonably have thought, that it's *best* Preferments must in *Policy* go to it's *worst* Defenders. I do not pretend by this to any uncommon Degree of Merit as a *Churchman*, though I defy the World to convince me of a base or wicked Action. If I have been thrown into *humbler* and more *laborious* Scenes of Life, than may suit with my *Degree*, and the Years I have now passed over, it is a Fate I sustain in common with many others, more *antient* and more *worthy* Clergymen. I must observe however, that, though this Circumstance of much Company, may teach a Man some Constancy in suffering, it does not take from *him* or *them*, the *Right*, or *Reason* to complain. For *Communities* were made for *Men*, as well as *Men* for *Communities*: and therefore every *Community* ought *reciprocally* to afford *them* the first Protection,

on, who by being in their Places it's *best Subjects*, have thereby been it's *best Support*. If such People are not treated according to their *Wants* and *Station*, it is plain the *Community* has *another Power* within it, opposing and counteracting *it's own*. For which Reason, as it can never be thought a *safe* or a *good* one; so neither in such a Condition can it *long* subsist. Circumstances like these have always led me to think very ill of a Form of Government *too much Republican*. Because in such Places, there being no SUPERIOR to *watch*, and *check*, Men have it in their Power to form themselves into *Juntos*, and *Combinations*; and without Regard to the *general* Good of Society, to seek only their own Continuance, and to do just what they please. In such Governments we generally find that *Honesty* is either overlooked or else oppressed and poor. Thus at ATHENS, we read, that *Aristides* was banished for meriting to be called the Just: And of the old Heroes of *antient* ROME, there were many, who left not wherewithal to bury them. * * * * *

* * * * * The Rest of this Speech
having no great Relation to publick Matters, is
omitted upon that Account. * * * * *
* * * * *

APPENDIX. - Number I.

The CASE of the Kentish PETITIONERS.

IT was in the Midst of those Clamours, that echoed through the Kingdom, and the universal Dissatisfaction of the People at the Proceedings of the *House of Commons*, &c. that the Gentlemen of *Kent* petitioned them, in a very humble Manner, to *have regard to the Voice of the People, and provide effectually for their Religion and Safety, &c.*

It was signed by all the Deputy Lieutenants there present, above twenty Justices of the Peace, all the Grand Jury, and other Freeholders then there.

This Petition was offered to the House on the 8th of May, 1701; the Gentlemen who delivered it, and own'd it at the Bar of the House, were Mr. *William Colepepper*, Mr. *Thomas Colepepper*, Mr. *David Polhill*, Mr. *Justinian Champneys*, and Mr. *William Hamilton*; for so I find all their Names written in the Votes, without the Addition of *Esq;* though four of them were Justices of the Peace, and two Deputy Lieutenants of the County. Concerning the Petition, the House came to this Resolution, That it was *Scandalous, Insolent and Seditious, &c.* The five Gentlemen they ordered to be taken into the Custody of the Serjeant at Arms. The Treatment they had from him was very singular, and shewed that they were under the high Displeasure of the House; for when he accidentally saw two of them talk together, he drew his Sword upon his Deputy for permitting it: And when upon one of those Gentlemen's demanding a Copy of their Commitment, which they reckoned they had a Title to by Virtue of the *Habeas Corpus Act*, and he refusing it, the Gentleman said he hoped the Law would do him Justice, his Reply was, that *he car'd not a Far for the Law*. The Reverence of the Law is fallen very low indeed, when one who has the Honour of being a Servant to the House of Commons, can presume to make so bold with it. However this Speech was of a Piece with the Declaration he had made the Gentleman before, "That he had unbounded Liberty of using them at *Discretion*, that he could confine them at Pleasure, "put them into Dungeons, lay them under Ground, &c." and indeed, by the *Miseries* and Nastiness of their Confinement, one would imagine that the Power of the *Inquisition* was at that Time subsisting in the nominally very free Country of

of England. The People however being warned and taking Warning, there came a Memorial inclosed in the following Billet directed to R——t H——y, Esq; S——r to the House of Commons.

Mr. S——r,

THE Memorial you are charged with, in the Behalf of many Thousands of the good People of England.

There is neither Popish, Jacobite, Seditious, Court, or Party Interest concerned in it; but Honesty and Truth.

You are commanded by Two Hundred Thousand Englishmen, to deliver it to the H——e of C——s, and to inform them, that it is no Banter, but serious Truth; and a serious Regard to it is expected; nothing but Justice, and their Duty is required, and it is required by them who have both a Right to require, and Power to compel, viz. the People of England.

We could have come to the House strong enough to oblige them to hear us, but we have avoided any Tumults, not desiring to Embroil, but to Save our Native Country.

If you refuse to communicate it to them, you will find Cause in a short Time to repent it.

This was not delivered by a Woman, as was said, but by the very Person who wrote it, guarded by about sixteen Gentlemen of Quality, who if any Notice had been taken of him, were ready to have carried him off by Force.

The Memorial among other things, contained a Claim of Right under seven Heads, of which the three former run thus:—"We do hereby claim and declare, *First*, That it is "the undoubted Right of the People of England, in case "their Representatives in Parliament do not proceed according to their Duty, and the People's Interest, to inform "them of their Dislike, disown their Actions, and to direct "them to such things as they think fit, either by Petition, "Address, Proposal, Memorial, or any other peaceable way "—*Secondly*, That the House of Commons *separately*, and "otherwise than by a Bill legally passed into an Act, have no "legal Power to suspend or dispense with the Laws of the Land, "any more than the KING has by his Prerogative.—*Thirdly*, "That the House of Commons has no legal Power, to imprison any Person, or commit them to Custody of Serjeants, "or otherwise (their own Members excepted) but ought to address the King, to cause any Person, on good Grounds, to "be apprehended, which Person, so apprehended, ought to "have

" have the Benefit of the *Habeas Corpus* Act, and be brought
 " to Trial by due Course of Law." After other Claims it
 concludes :—" Thus, Gentlemen, you have your Duty laid
 " before you, which it is hoped you will think of: But if
 " you continue to neglect it, you may expect to be treated
 " according to the Resentments of an injured Nation; *Eng-*
 " *lishmen* are no more to be *Slaves* to *Parliaments*, than to
 " *Kings*. Our Name is *LEGION*, and we are *MANY*."

A P P E N D I X Number II.

The CASE of the Men of Aylesbury.

THERE had been great Complaints long made, and these had increased within a few Years, of great *Partiality* and *Injustice* in the Election of Parliament-Men, both by *Sheriffs*, and by the Returning-Officers in *Boroughs*. In *Aylesbury* in *Buckinghamshire*, the Return was made by four Constables; and it was believed, that they had made a Bargain with some of the *Candidates*, and then managed the Matter so, as to be sure that the *Majority* should be for the Person, to whom they had engaged themselves.—And when these Matters came to be examined by the House of Commons, they gave the Election always for *him*, who was reckoned of the *Party* of the *Majority*, in a Manner as *bare-faced* that they were scarce out of Countenance, when they were charged for *Injustice* in judging of Elections. It was not easy to find a Remedy against such a crying Abuse, of which all Sides in in their Turns, as they happened to be depressed had made great Complaints, but when they came to be the Majority seemed to forget all.—At last the Action was brought against *William White*, and the other Constables of *Aylesbury* by one *Matthew Asby*, who had been always admitted to vote, but was denied it in the last Election.—This Action was tried at the *Affizes*, the *Jury* found that the Constables had denied him a Right of which he was undoubtedly in Possession, so that they were cast with Damages. But it was moved in the *Queen's Bench* to quash all the Proceedings in that Matter. The Judges *Porvel*, *Gould*, and *Porwis* were of Opinion, that no hurt was done to *Asby*. Chief Justice *Holt* alone differed from the Rest. He made a great Difference in an Election of a Member, and a *Right to vote* in it. That the House of Commons were the only Judges of the former

former, whether it was rightly managed without Bribery, Fraud, or Violence: But the *Right of voting* in an Election, was an original Right founded either on a *Freehold* of forty Shillings the Year, &c. on Burgage-Land, or Prescription, or by Charter, &c. these were all legal Titles, and as such triable in a Court of Law. He spoke long and learnedly and with some Vehemence upon the Subject: But he was one against three, and so the Order of the *Queen's Bench* was given for the Constables. However this *Distinction* of his Lordship's was a very just one, and of the last Importance. For if the Majority of the House of Commons were to be in this particular Judges of private Right, it would put it into their Hands, at any Time, to fill a Number of Seats in the House, and so by Degrees entirely to extinguish the Power of Election in the People. They knew the Advantage of such a Power, and therefore contended hard for it in their third Resolution. But the Matter being now by a Writ of Error brought before the House of Lords, their Lordships on this Occasion stood as a Bulwark for the Constitution and resolved (3) That the declaring of *Matthew Ashby*, &c. is in effect to subject the Laws of England to the Votes of the House of Commons, &c.

The Lords likewise ordered the Lord Keeper to send a Copy of the Case and their Resolutions to all the Sheriffs of England, to be communicated to all the Boroughs in their Counties. The Commons were highly provoked with this, but they had during this Session lost much of their Reputation, not only with fair and impartial Judges, but even with those, who were most inclined to favour them. The Judgement of the Lords in the Case of *Ashby* being executed, five other of the Men of *Aylesbury* brought their Action against the Constables for refusing their Votes: Upon which the House of Commons committed them to *Newgate*, where they lay three Months: When being apprehensive that the Queen would grant Writs of Error whereby they might be discharged, they also ordered them to be removed from *Newgate*, and taken into Custody of a Serjeant at Arms, which Order was executed at Midnight, with such Circumstances of Terror, as have been seldom exercised against the greatest Offenders. The Resolutions of the Lords upon this, deserve to be the Basis of a Law to prevent such Excesses in the Commons for the future, they are too long to be inserted here: But their last Representation before the Queen must not be totally omitted, which was, "That the Proceedings of the House of Commons against the

“ the *Aylesbury* Men were wholly new, and unprecedented.
 “ That it is the Birth-right of every *Englishman*, who apprehends himself to be injured, to seek for Redress in her Majesty’s Courts of Justice. That if there be any Power that can controul this Right, and can prescribe when he shall, and when he shall not be allowed the Benefit of the Laws, he ceases to be a *Freeman*, and his Liberty and Property are precarious. That the *Crown* lays Claim to no such Power and their *Lordships* were sure, the Law has trusted no such Authority with any Subjects whatsoever.”

To prevent, therefore, future Inconveniences of this Sort, my good Countrymen, we may reasonably hope that those who *pretend* to claim such Authority, will by a written Law for ever resign it. This is a Thing you should not sleep over.

F I N I S.



EXTRACTS from the SPEECH of Lord Chief Justice HOLT.

I Am sensible, said he, of the great Disadvantage I lie under, because *eleven* of the Judges are against my Opinion. The Case being of Moment and Concern I did *not confer* with them, before I delivered my Thoughts. And it is a second Disadvantage, that I have so great an Esteem for their Sentiments, that I would willingly resign my Opinion to theirs. But then I lie under another, which is to encounter an Opinion and Judgment of the House of Lords. I must confess the Commons of *England* are entrusted with, and are very zealous for our Liberties, and therefore I would think it a Misfortune, to lie under their Displeasure. Yet there is another Thing, that lies upon me, which at all Events I am to take Care of, and that is a good Conscience. I am upon my Oath to judge impartially and justly. I do not think this such an Imprisonment, that the *Freemen* and Subjects of *England* are to be bound by; and it will affect all the Kingdom, if by any Declaration, or Prohibition made by the House of Commons, they are restrained from bringing a lawful Action. Neither of the Houses of Parliament, separately or jointly, have any Power to dispose of the Liberty or Property of the Subject. It must be with the *Queen* added to them, this is the Constitution of the *English* Government. It is said in Return that the Prisoners are guilty of a *Breach of Privilege* for bringing an Action. I must therefore declare my Opinion, that commencing a Suit is no Breach of Privilege, though it be against a Member himself, so he be not affected in his Person or Lands. The second Crime mentioned in the Commitment and Return is Prosecuting. What is meant thereby seems not to be so clear, because *Prosecuting* may be taking several Ways, as entering of a *Continuance*, which cannot be said to be any Breach of Privilege; the Person of the Member, or his Estate not being disturbed thereby.—Again, the House of Commons should have shewn that they have a Privilege; for, if the High Constable of *England* should not shew his Authority, we should not take more Notice of him than of the Constable of * *St. Martin's*. The Law of the Land must take Place.—If an Action is sued and prosecuted against a Peer, no *Action de Scandalis*

* Certainly his Lordship could not mean Mr. Carne.

Scandalis Magnatum, will lie; if there was any probable Cause of Action. I do not think that ever Privilege did extend so far, as to exclude, or debar any Man from bringing any Action, especially where there is just Cause. This Case has undergone a great and high Judgment above, upon the Queen's Writ of Errors.——Another Part of the Return says, *that the Prosecution was contrary to the Declaration and in Breach, &c.* I do not well know, what is meant by a *Prosecution contrary to a Declaration*: But suppose there was a Declaration, I much question if that Declaration will make a *Breach of Privilege*, which was not so before. There is no Precedent for it.——Privilege is not unlimited, but established by the Rules of Law. If a Member break the Peace he must find Sureties, &c.——If the Declaration does claim a Privilege, and says it is so; yet if it was not so before; the People of *England* are not estopped, to say it is so. So neither the one House nor the other can enlarge their Privileges. They concern the Liberties of the People in an high Degree, and nothing but an Act of Parliament can make a Man's Person subject to Imprisonment, but where originally he was so subject, &c. &c.

A D V E R T I S E M E N T.

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